

APPEAL NO. 041600
FILED AUGUST 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 4, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable low back injury on _____, and that he had disability from June 15, 2003, through February 10, 2004.

The appellant (carrier) appealed, contending that the claimant had failed to prove he sustained a new injury on _____; that the claimant failed to prove any injury he did have was causally connected with his employment; and that the claimant did not have disability. The claimant responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant, a sandblaster and painter, was involved in nonwork-related motor vehicle accidents (MVA) on April 7 and May 7, 2003. The claimant testified that on _____, he lifted, sandblasted and painted "about fifty-three" angle irons and that the next morning he woke up with pain in his low back. The claimant reported the injury and went to see a doctor who was treating him for his MVA injuries. The evidence is conflicting whether the claimant sustained a new injury, either in its own right or by way of aggravation of a preexisting condition or whether the pain he had was a continuation or flare up from his MVA injuries. An MRI performed on August 19, 2003, suggests muscle spasms but no other abnormalities. The hearing officer found the claimant "was extremely honest and credible in his testimony."

The questions of whether the claimant sustained a new compensable injury, by aggravation or otherwise and whether he had disability were factual issues for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Although another fact finder might have reached a different conclusion on the same evidence, that alone is not a sound basis on which to reverse the hearing officer's decision. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). There was conflicting evidence presented at the hearing on the issues. The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determinations on the issues are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS TEXAS 75251-2237.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge